Before the
Office of the United States Trade Representative
Trade Policy Staff Committee

PUBLIC DOCUMENT

POTENTIAL ACTION UNDER SECTION 203 OF THE TRADE ACT OF 1974 WITH REGARD TO IMPORTS OF CERTAIN STEEL	)

RESPONSE
OF
GERLIN, INC.
TO COMMENTS
ON ACTIONS THAT THE PRESIDENT SHOULD TAKE
REGARDING
STAINLESS STEEL FLANGES
AND STAINLESS STEEL FLANGE FORGINGS

Simeon M. Kriesberg
Carol J. Bilzi
Lisa L. Levine
MAYER, BROWN & PLATT
1909 K Street, N.W.
Washington, D.C. 20006-1101

Counsel for
Gerlin, Inc.

January 15, 2002

TABLE OF CONTENTS

Page

EXECUTIVE SUMMARY

This response is submitted on behalf of Gerlin, Inc. ("Gerlin") of Carol Stream, Illinois, in response to the United States Trade Representative's request, 66 Fed. Reg. 54321, 59599, 67349 (Oct. 26, 2001; Nov. 29, 2001; Dec. 28, 2001), for written responses to comments submitted on January 4, 2001 addressing the action that the President should take in light of the recommendations of the International Trade Commission ("ITC"), which were released on December 19, 2001.

Gerlin is a U.S. manufacturer of stainless steel flanges and stainless steel butt-weld pipe fittings.[1/] Stainless steel flanges are classified under HTSUS 7307.21.5000.1111. Stainless steel flange forgings, which are used to make finished flanges, are classified under HTSUS 7307.21.1000. Gerlin submitted an exclusion request for stainless steel flange forgings on November 13, 2001, and a response to an exclusion request filed by the Association of European Quality Flange Manufacturers on December 5, 2001. It also submitted a proposal on adjustment actions on November 5, 2001. On January 4, 2001, Gerlin submitted comments on the action the President should take under Section 203(a).

If Gerlin's proposed adjustment actions are to become a reality, the remedy ordered by the President must be effective. To be effective, an additional tariff of at least 40 percent must be ordered, as Gerlin explained in its January 4 submission. The comments of foreign producers and distributors of imports — including the Association of European Quality Flange Manufacturers ("AEQFM"), AvestaPolarit Oy ("AvestaPolarit"), and Silbo Industries, Inc.

[1/] These comments focus primarily on Gerlin's flange operations. Gerlin has joined with other U.S. manufacturers of stainless steel butt-weld pipe fittings in a submission made by Georgetown Economic Services.

("Silbo") — urge the President to abandon or eviscerate any remedy for the manufacturers of stainless steel flanges. These comments are without merit, and Gerlin responds to their major arguments in this submission.[2/]

Without an effective remedy, the stainless steel flange and fitting industry will not be able to adjust to import competition and "given the size of the corporations that comprise this industry, many producers will likely enter into bankruptcy."[3/]

I. AN EFFECTIVE REMEDY REQUIRES AN ADDITIONAL TARIFF OF AT LEAST 40 PERCENT AND THE EXCLUSION OF STAINLESS STEEL FLANGE FORGINGS

A. An Additional Tariff of at Least 40 Percent is Warranted

As Gerlin explained in detail in its January 4, 2001 submission, the injury suffered by the domestic industry was substantial and the President should impose effective relief that will allow the industry to adjust to import competition. Gerlin urges the President to impose a tariff of at least 40 percent *ad valorem* on imports of finished flanges in addition to the current tariff.[4/] The

---

[2/] The comments of AEQFM address both the stainless steel flange and carbon steel flange industries. AEQFM often cites information that is relevant to only one industry to support its assertions about both industries, or leaves unclear which of the two industries is being discussed. In light of the fact that these are two completely separate industries with no overlapping producers, Gerlin suggests that USTR disregard any AEQFM comments that do not clearly state whether they refer to the stainless or carbon flange industry.

[3/] Determinations and Views of Commissioners in *Steel*, Inv. No. TA-201-73, at P551, C576 (Commissioner Devaney) (December 2001) ("ITC Report"). For ease of reference, this submission cites to both the public ("P") and the confidential ("C") version of the ITC Report, though the only information disclosed in this submission is publicly available.

[4/] The stainless steel butt-weld pipe fitting producers, which include Gerlin, have also recommended a 40 percent tariff to USTR. *See* Domestic Industry Comments of Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (Jan. 4, 2001).

remedy should extend for a four-year period to allow the domestic industry to adjust to import competition. A higher tariff is warranted for the following reasons:

- First, the injury suffered by this industry has been severe. Three Commissioners made an affirmative injury finding.[5/] "Nearly every indicator of the health of the domestic industry trended downward over the period of investigation."[6/] The industry "experienced significant declines in its production levels, market share, capacity utilization rates, employment levels, and sales volumes," which "show that the industry's financial condition and production operations were significantly impaired during the period."[7/] While domestic apparent consumption "increased significantly" during the period of investigation, the domestic industry "has not participated in this growing market since imports have captured substantial market share from the domestic industry."[8/] Without effective relief, "given the size of the corporations that comprise this industry, many producers will likely enter into bankruptcy."[9/]

- Second, the influx of imports has been the substantial cause of that injury. All six Commissioners concluded that the statutory criterion of increased imports was met. The volume of stainless steel flange and fitting imports surged a tremendous 73.5 percent from 1996 to 2000. This increase is among the largest for any of the product categories examined in this investigation.

- Third, there is substantial underselling by imports in this market. The ITC's price comparisons revealed that pricing by non-NAFTA imports ranged from 23.7 to

---

[5/] Chairman Koplan and Commissioners Devaney and Bragg made affirmative determinations, while Vice Chairman Okun and Commissioners Miller and Hillman made negative determinations. ITC Report at P1-7, C1-7. Where the ITC is equally divided, the determination of either group of Commissioners may be considered by the President to be the determination of the ITC. 19 U.S.C. § 1330(d)(2000). See *Memorandum for the Secretary of the Treasury and USTR, Action under Section 203 of the Trade Act of 1974 Concerning Steel Wire Rod* (Feb. 16, 2000) (President considered group of Commissioners voting in the affirmative to be determination of ITC and imposed remedy). The facts of this case compel the conclusion that the determination of three Commissioners voting in the affirmative should be considered the determination of the ITC.

[6/] ITC Report at P289, C297 (Commissioner Bragg).

[7/] ITC Report at P266, C273 (Chairman Koplan).

[8/] ITC Report at P264, C272 (Chairman Koplan).

[9/] ITC Report at P551, C576 (Commissioner Devaney).

51.8 percent below the prices of the domestic product and that underselling by Mexican imports ranged from 36.7 percent to 51.8 percent. Industry witnesses testified at the ITC hearing that they encounter underselling margins of 40 percent in this market.[10/] These huge margins of underselling are particularly injurious in this market, where price is key to competition between imports and domestic products. There is a "high degree of substitutability" between domestic and imported stainless steel flanges and fittings, and "price is an important part of the purchasing decision."[11/] Of more than 240 respondents to the ITC's questionnaire on stainless steel products, over 50 percent stated that they "always" or "usually" purchase the lowest-priced product.[12/] Thus, there is a large segment of this market that looks for the lowest price possible, without regard to differences in quality or service.

- Fourth, the import relief ordered by the President will be the only remedy with any real impact on the stainless steel fitting and flange industry. Global agreements to reduce worldwide steel capacity and assistance to companies burdened with massive legacy costs are not relevant to this industry. The producers of stainless steel flanges are small companies, privately-held, often family-owned and managed. They will benefit only from import relief imposed by the President under Section 201.

- Fifth, a higher tariff is needed to address one of the inherent weaknesses of a tariff remedy: its inability to compensate for accumulated importer inventories and for import surges prior to the effective date of the remedy. As of June 30, 2001, importer inventories of flanges and fittings accounted for over 48 percent of the importers' U.S. shipments. During the period from 1996 to 2000, imports of finished flanges more than doubled in volume. Individual countries have also demonstrated the capacity to increase abruptly their shipments of finished flanges to the United States. From 1999 to 2000, for example, imports of German flanges more than doubled in volume, as did imports from India.

[10/] ITC Hearing Transcript at 998 (Nov. 9, 2001) (testimony of Jack Sharkey of Gerlin); and at 995 (testimony of David Cook of Maass Flange Corp.).

[11/] ITC Report at P267, C275 (Chairman Koplan).

[12/] ITC Report at P-STAINLESS-66-67, C-STAINLESS-91.

B. A Quantitative Restriction Would Not be Effective Unless Based on the Average Annual Level of Imports During 1993 to 1995

Commissioner Devaney proposed a quantitative restriction based on the average annual quantity of imports from 1996 to 1998. This remedy would not be sufficient to address the serious injury that the industry has suffered. To use any years during the period of investigation as the baseline for a quantitative restriction would effectively reward those foreign suppliers that caused the surge of imports during those years — flange imports surged by 16 percent from 1995 to 1996 and by another 50 percent from 1996 to 1998. Particularly since the market is experiencing a downturn due to the slowdown in the overall economy, to set the quota at 1996 to 1998 average annual import levels would provide no relief at all from injurious imports.

If the President is disinclined to order a tariff remedy of at least the 40-percent level necessary to provide meaningful relief to the flange industry, then Gerlin would call to the President's attention the remedy proposal that it originally submitted to the ITC, a four-year tariff-rate quota ("TRQ"), that would provide more effective relief than Commissioner Devaney's quota proposal. A critical element of Gerlin's TRQ proposal was that the quantitative element was based on the average annual level of imports during 1993-95, the years immediately preceding the devastating surge in imports.

The choice of a TRQ, instead of a quota, would give the President flexibility in selecting the base period for the quantitative element of the TRQ. Under U.S. law, if the President proclaims a "quantitative restriction," the restriction

> shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a

> different quantity or value is clearly justified in order to prevent or remedy the serious injury.[13/]

This provision essentially tracks the second sentence of Article 5.1 of the WTO Agreement on Safeguards.

However, this provision does not apply to TRQs because a TRQ is not a "quantitative restriction." A recent WTO Panel agreed with this interpretation, concluding that since a TRQ is not a "quantitative restriction," there is no requirement to shape a TRQ remedy in light of any "recent" or "representative" three-year period.[14/]

If the President decides to impose a TRQ on imports of stainless steel flanges and fittings, it should be (i) implemented on an HTS-specific basis, (ii) be set at quarterly intervals to avoid surges of imports early in the year, (iii) charge against the first-year quantity the importer inventories accumulated between December 31, 1996 and June 30, 2001, and (iv) charge against the first-year quantity any imports, entering between the date of the ITC's injury determination and the effective date of the President's remedy, that exceed the level of those imports during the corresponding period of a year ago. The TRQ should also include an in-quota tariff on Mexican flange imports, and a 50-percent above-quota tariff on imports from all sources. Gerlin considers this TRQ remedy to be an effective form of relief in the event that the President is not inclined to order an effective tariff remedy.

[13/] 19 U.S.C. § 2253(e)(4)(2000).

[14/] *Report of Panel on United States — Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/R, at ¶ 7.69 (Oct. 29, 2001).

C. Stainless Steel Flange Forgings Should Be Excluded From the Remedy

To promote positive adjustment to import competition by the domestic flange industry, the President should impose import relief on finished flanges, but not on flange forgings. In its November 13, 2001 exclusion request and in its January 4, 2002 comments on actions that the President should take, Gerlin explained in detail the reasons why the President should exclude stainless steel flange forgings from import relief. Two other domestic producers, Westbrook and American Fittings, filed submissions with USTR on December 5, 2001 in support of Gerlin's exclusion request. Since none of the January 4 submissions to USTR relating to stainless steel flanges expressed any opposition to this exclusion, Gerlin will not reiterate here the reasons why this exclusion is warranted.

II. ANY IMPORT RELIEF IMPOSED BY THE PRESIDENT MUST INCLUDE MEXICO IN ORDER TO BE EFFECTIVE

Two of the three ITC Commissioners who made affirmative injury determinations found that Mexican imports contributed importantly to the serious injury suffered by the domestic industry. The ITC, in its press release of October 23, 2001, correctly characterized this determination as an affirmative determination of the ITC regarding Mexico's contribution to the industry's serious injury. The contrary suggestion by AvestaPolarit — that the affirmative vote of two of the three Commissioners who made an affirmative injury finding is a negative determination as to NAFTA imports — is not supported by the statutory framework of Section 201.[15/]

[15/] Section 311(a) of the NAFTA Implementation Act, 19 U.S.C. § 3371(a), was grafted onto the existing Section 201 provisions of the Trade Act of 1974. The Trade Act provides: "If *the Commission* makes an affirmative determination [in a Section 201 investigation], *the Commission* shall also recommend the action that would address the serious injury, or threat thereof, to the domestic industry . . . ." 19 U.S.C. § 2252(e)(1) (emphases supplied). Here, the

Wholly apart from whether the President should consider this an affirmative determination of the ITC, however, it is persuasive to the President's independent analysis required by the NAFTA Implementation Act that two Commissioners found that Mexican imports contributed importantly to the domestic industry's serious injury. Section 312(a) of the NAFTA Implementation Act requires that the President find that imports from NAFTA countries (1) "account for a substantial share of total imports" and (2) "contribute importantly to the serious injury" found by the ITC. 19 U.S.C. § 3372. The record developed by the ITC supports an affirmative finding by the President on each of these elements.[16/]

---

same sentence uses the term "Commission" to mean two different things. In the first clause of the sentence, "the Commission" refers to all of the members of the Commission. In the second clause, "the Commission" refers to only those members of the Commission who voted in the affirmative on injury from global imports. *See* 19 U.S.C. § 2252(e)(6).

Section 311(a) similarly provides: "If, in any investigation initiated under [Section 201] of the Trade Act of 1974, *the International Trade Commission* makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 1330(d) of this title), *the International Trade Commission* shall also find [whether NAFTA imports account for a substantial share of total imports and contribute importantly to the serious injury, or threat thereof, caused by imports]." 19 U.S.C. § 3371(a) (emphases supplied).

Thus, Section 311(a) closely tracks the language of the pre-existing statutory scheme, which distinguishes "the Commission" at the time of the vote on injury from global imports from "the Commission" following that vote. This distinction was not obliterated by the NAFTA provision. Hence, once the "Commission" votes on injury from global imports, only those Commissioners voting in the affirmative constitute the "Commission" for the logically subsequent vote on whether imports from Mexico contributed importantly to the serious injury found. If Congress had intended to change this underlying statutory framework of Section 201 when it added the NAFTA amendments, it certainly could have said so. It did not.

[16/] Gerlin's support for import restrictions on Mexican imports does not imply a lack of concern about imports from Europe, as the AEQFM concludes in its Comments. Gerlin has addressed Mexico separately in its submissions because of the different standard applied to Mexican imports under the NAFTA Implementation Act. Interestingly, AvestaPolarit, an opponent of import restrictions on Mexico, argues in its January 4 submission to USTR that the domestic industry is only concerned about imports from Europe and Asia, and not Mexico.

First, Section 311(b)(1) defines "substantial share" by explaining that "such imports *normally* shall not be considered to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article subject to investigation, measured in terms of import share during the most recent 3-year period." 19 U.S.C. § 3371(b)(1) (emphasis supplied). AvestaPolarit argues that this requirement is not met because Mexico was only the seventh largest source country over the period 1998-2000. This analysis completely reads out of the statute the word "normally," however. Indeed, Commissioner Bragg found that "although Mexico was never one of the top five suppliers over the last three year period, the volume of imports from Mexico, with an 8.3 percent share of apparent U.S. consumption is nonetheless substantial and increased throughout the period."[17/] She concluded that, "departure from the 'normal' outcome is warranted with respect to Mexico."[18/] Thus, despite the fact that Mexico was not among the top five suppliers over the last three-year period, Commissioners Bragg and Devaney both concluded that imports from Mexico were substantial enough to warrant restriction.

If the President has any hesitation about ordering relief from Mexican imports of stainless steel flanges and fittings, the President should at a minimum order relief from Mexican

---

Mindful of the fact that Section 201 is a global remedy that applies to imports from all countries, Gerlin has not singled out imports from certain countries as being more injurious than others. Gerlin believes that imports from all countries have contributed to the dire condition that the domestic industry finds itself in today.

[17/] ITC Report at P305, C314.

[18/] ITC Report at P305, C314.

flanges.[19] With respect to stainless steel flange imports only, Mexico was the third largest foreign supplier to the United States in 1996, 1997, and 1998, the second largest in 1999 and 2000, and the third largest in the first half of 2001. Imports from Mexico of stainless steel flanges accounted for about 8 percent of total imports in 1996, 11 percent in 1997, 12 percent in 1998, 17 percent in 1999, 13 percent in 2000, and 14 percent in 2001.

Second, it is clear from the record developed by the ITC that Mexican imports contributed importantly to the injury suffered by the domestic industry. Commissioner Devaney was persuaded by the fact that Mexico became the seventh largest source of flange and fitting imports in 2000, surging a tremendous 285 percent since 1996.[20] Commissioner Bragg concluded that the volume of imports from Mexico, with an 8.3 percent of apparent U.S. consumption, was substantial and increased over the last three years.[21] Mexican imports also undersold the domestic product in every quarter for which the ITC collected data and there were no instances of overselling.[22] Jack Sharkey of Gerlin testified before the ITC that the "volume and pricing of stainless steel flanges from Mexico have made them especially harmful. While overall stainless flange imports doubled from 1996 to 2000, flange imports more than tripled."[23]

---

[19] All of the parties, both those supporting import relief and those opposing it, agree that any remedy imposed on stainless steel fittings and flanges must be implemented on an HTS-specific basis because the product group consists of seven diverse products.

[20] ITC Report at P351, C367.

[21] ITC Report at P305, C314.

[22] ITC Report at P-STAINLESS-83, C-STAINLESS-110.

[23] ITC Hearing Transcript at 2235 (Sept. 28, 2001).

AvestaPolarit argues that imports from Mexico cannot be found by the President to contribute importantly to any injury because the average unit values of fitting and flange imports from Mexico increased over the period of investigation, while the average unit values of fitting and flange imports from the other top 15 countries decreased. These are average unit values for the ITC's product group 33, which is a broad category covering seven diverse products. Some of these products are more expensive than others. As a result, these unit value statistics are of limited usefulness without knowing the product mix represented by the imports from each country over time. For example, official ITC import statistics show that the unit values of stainless steel flanges from Mexico dropped from $5.97 per kilogram in 1996 to $5.17 per kilogram in 2000 and the first half of 2001. Thus, to conclude that the unit values of Mexican imports increased over the period is misleading at best.[24/]

The NAFTA requirement to compensate Mexico should not be a roadblock to providing relief to the domestic industry. The U.S. government currently has numerous bilateral trade and economic issues pending with the Mexican government. The issue of compensation could be included in the negotiations on any one of these issues, and trade-offs could be made that would minimize the impact of compensation.

Finally, while extremely significant for the domestic industry, imports of flanges and fittings from Mexico represent a relatively small value in the scheme of the entire bilateral trade relationship between U.S. and Mexico. According to official ITC import statistics, the landed duty-paid value of stainless steel flanges (HTSUS 7307.21.5000) from Mexico was $5.9 million

---

[24/] The ITC, in its analysis of average unit values with respect to carbon steel flanges and fittings, cautioned against "placing undue weight on [average unit value] information, as it may be influenced by issues of product mix." ITC Report at P179 n.1087, C185 n.1087. The stainless steel flange and fitting product group is similarly diverse.

in 2000.[25/] If the President decides to include Mexican imports in his remedy order, the required compensation would be relatively minimal.[26/]

III. COMMENTS ADVERSE TO A STRONG PRESIDENTIAL REMEDY ARE WITHOUT MERIT

A number of comments were submitted to USTR by parties opposing an effective remedy for the stainless steel flange and fitting industry. These comments fail to make the case for denying the domestic industry the remedy it needs in order to take effective adjustment actions. Gerlin responds to the principal arguments of the opponents: (a) that the flange industry is not properly included in the Section 201 proceeding; (b) that non-integrated flange producers, such as Gerlin, are not members of the domestic industry; (c) that a Section 201 remedy is not appropriate because the core of this case is price underselling; (d) that existing antidumping orders are sufficient to address the underselling in this market; (e) that the ITC erroneously collected data for flanges and fittings as a group; and (f) that domestic producers will be unable to supply the oil and gas sector if imports are restricted.

A. The Flange Industry Was Properly Included in the Section 201 Proceeding

AEQFM alleges that the domestic flange industry was somehow inadvertently "caught up" in this Section 201 investigation, and that it is not part of "Big Steel," which AEQFM

[25/] In this submission, Gerlin is primarily focused on the flange industry, but butt-weld pipe fittings of Mexico are also an area of concern. The landed duty-paid value of stainless steel butt-weld pipe fittings (HTSUS 7307.23.0000) from Mexico was $15.4 million in 2000.

[26/] AvestaPolarit asserts that significant segments of the stainless steel flange and fitting industry oppose trade restrictions on Mexican imports. AvestaPolarit Comments, at 17. Maass Flange Corp. has indicated that it opposes any remedy on Mexican imports because it has a plant in Mexico. ITC Hearing Transcript at 996 (Nov. 9, 2001). The other domestic manufacturers cited by AvestaPolarit, Beck Manufacturing and Capitol Manufacturing Co., produce stainless products for which Gerlin is not advocating any remedy for Mexico.

alleges is the principal focus of this case. AEQFM Comments, at 7. The fact is that U.S. flange producers were included in this investigation — not only at the request of USTR, but also at the request of the Senate Finance Committee. These companies worked diligently and expended scarce resources to cooperate fully with the ITC and provide financial and business information throughout this investigation, and the ITC found that they suffered serious injury as a result of increased imports. To suggest now that these companies do not warrant a remedy because their inclusion in this case was a mistake by USTR is an insult to everyone involved in this important and complex investigation.

It is true that stainless steel fitting and flange manufacturers have different corporate profiles than the larger steel companies involved in other segments of this investigation. This does not preclude them from receiving Section 201 relief; rather, the distinctiveness of the flange and fitting industry should be taken into consideration in the President's *choice* of remedy. The principal non-tariff remedies that have been discussed in Government circles — negotiations for reduction of global steel capacity and assistance to companies burdened with massive legacy costs — are not relevant to the stainless steel flange and fitting industry. These companies are too small, and too isolated from the large flat steel and long steel producers, to benefit from foreign government agreements to reduce the capacity of their large steel makers. Moreover, relief from legacy costs will not be the boon to these companies that it may be for their much larger counterparts in other segments of the steel industry. Consequently, the remedy selected by the President is highly likely to be the only remedy that has any real impact on the marketplace in which U.S. flange and fitting producers compete.

B. Non-Integrated Flange Producers Such as Gerlin are Members of the Domestic Industry

AEQFM argues that non-integrated producers, such as Gerlin, do not produce a domestic article and therefore do not qualify as domestic producers entitled to relief under Section 201.[27/] AEQFM Comments, at 18. Section 201 defines the "domestic industry" as the producers of the like or directly competitive article. 19 U.S.C. § 2252(c)(6). Here, the ITC defined the like product to be stainless steel flanges and fittings, both of which are produced by Gerlin. The term "domestic industry" is also defined as producers located in the United States. 19 U.S.C. § 2252(c)(6). Gerlin has its corporate offices and substantial manufacturing facilities in Carol Stream, Illinois. It has made significant capital investments in expensive equipment, and it employs many workers in the United States.

Moreover, throughout its investigation, the ITC never questioned whether non-integrated producers were properly included in the domestic industry.[28/] Indeed, the ITC has always included non-integrated producers such as Gerlin in the domestic flange industry in other investigations. *Stainless Steel Flanges from India and Taiwan*, Invs. Nos. 731-TA-639 and 640

[27/] AEQFM also asserts that the majority of domestic producers are non-integrated manufacturers. In fact, two of the largest domestic producers in the U.S. flange industry are integrated producers: Maass Flange Corp. and Ideal Forging Corp.

[28/] AEQFM also argues that a *proposed* Customs Service country-of-origin marking that would require finished flanges made in the United States from imported forgings to be marked with the country of origin of the forging precludes Gerlin from being considered a member of the domestic industry for purposes of the ITC's investigation. Gerlin addressed this issue in detail in its January 4 submission. The ITC was not persuaded by AEQFM's argument and neither should be the TPSC.

(Final), USITC Pub. 2724 (Feb. 1994); *Forged Stainless Steel Flanges from India and Taiwan*, Invs. Nos. 731-TA-639 and 640 (Review), USITC Pub. 3329 (July 2000).[29/]

C. Substantial Underselling Does Not Preclude A Section 201 Remedy

AEQFM asserts that the "substantive core" of the domestic industry's complaint is allegations of price underselling and not massive imports, global overcapacity, or overproduction of flanges. AEQFM argues that the antidumping laws are more appropriate to address unfairly-traded imports. AEQFM Comments, at 7, 20. In fact, the crux of this case has been the massive surge in imports during the period of investigation. All six ITC Commissioners found this surge in imports sufficient to meet the statutory requirement for increased imports. The absolute volume of stainless steel flange and fitting imports surged a tremendous 73.5 percent from 1996 to 2000.[30/] Indeed, this increase is among the largest for any of the product categories examined in this investigation.[31/] Gerlin did not focus on overcapacity and overproduction of flanges during the ITC investigation because these are not statutory prerequisites to a finding of injury under Section 201.

[29/] AEQFM has persistently argued throughout the ITC's investigation and in its submissions to USTR that this case is about rival domestic producers — the integrated and the non-integrated producers — in an attempt to distract the ITC and USTR from the real issues in the case. Both the integrated and non-integrated producers, however, are united in their strong support of effective import relief for finished flanges, a position strongly opposed by AEQFM. *See* ITC Hearing Transcript at 994 (Nov. 9, 2001) (testimony of Gary Bouffard of Ideal Forging Corp.); ITC Hearing Transcript at 995 (Nov. 9, 2001) (testimony of David Cook of Maass Flange Corp.); and ITC Hearing Transcript at 997 (Nov. 9, 2001) (testimony of Jack Sharkey of Gerlin).

[30/] ITC Report at P281, C289 (Commissioner Bragg).

[31/] ITC Report at P279-281, C287-289 (Commissioner Bragg).

The issue of price underselling was raised in the context of analyzing whether the domestic industry suffered serious injury by reason of increased imports. The ITC itself produced data on the magnitude of underselling in this market, and the Commissioners cited underselling as a persuasive factor in determining that imports were a substantial cause of the domestic industry's injury.[32/] Thus, an analysis of price underselling is an important and appropriate element of a Section 201 investigation.

D. Existing Antidumping Orders are Not Sufficient to Address the Price Underselling in this Market

In its submission to USTR, Silbo, an opponent of import relief, acknowledges that the record developed by the ITC "reflects some instances of underselling." Silbo Comments, at 16. Silbo then asserts that the antidumping duty orders currently in effect on stainless steel flanges "ameliorate the effects" of any underselling in this market. In fact, antidumping orders apply to imports of stainless steel flanges from only two countries, India and Taiwan. *Stainless Steel Flanges from India and Taiwan*, Invs. Nos. 731-TA-639 and 640 (Final), USITC Pub. 2724 (Feb. 1994); *Forged Stainless Steel Flanges from India and Taiwan*, Invs. Nos. 731-TA-639 and 640 (Review), USITC Pub. 3329 (July 2000). These orders have not been effective in stemming the tide of imports. In the case of India, the antidumping duties vary greatly, with one producer subject to a zero margin and another subject to a seven percent margin. Consequently, Indian flanges still enter the U.S. market. Indeed, India was the fourth largest supplier of stainless steel flanges to the United States in the first half of 2001. In the case of Taiwan, any Taiwanese product that was displaced from the U.S. market by the antidumping order has been replaced

---

[32/] ITC Report at P267-68, C275 (Chairman Koplan) and P351, C366 (Commissioner Devaney).

since 1994 by other foreign suppliers. Thus, the antidumping orders have had little effect on the pricing and volume of stainless steel flange imports.

E. The ITC had Ample Information to Conclude that the Flange Industry is Being Injured by Imports

AEQFM asserts that the ITC erroneously collected data for fittings and flanges as a group and, as a result, the ITC's findings are flawed. AEQFM Comments, at 3. That the ITC chose to render its decision on flanges and fittings combined does not mean that the data presented to the ITC was solely in aggregate form. To the contrary, there was ample information on the record regarding flanges alone, including import data, questionnaire responses by flange manufacturers (Gerlin, a producer of both flanges and fittings, supplied separate data relating to its flange operations in its questionnaire response to the ITC), sworn testimony by flange manufacturers on underselling by imported flanges, and so forth. None of this information suggested that flange manufacturers were any more insulated from the injurious impact of surging low-priced imports than was the remainder of the stainless steel fitting and flange industry.

AEQFM also argues that the ITC collected no underselling pricing data regarding flanges because it selected a fitting as the representative product for the flange and fitting product group. AEQFM Comments, at 17. Of course, with an investigation of this magnitude, it was simply not feasible for the ITC to collect pricing data on every product. There is ample evidence on the record developed by the ITC, however, that there is substantial underselling in the flange market. For example, Jack Sharkey stated that Gerlin has "encountered underselling margins of 40 percent on stainless flanges."[33/] The Vice President of Maass Flange Corp. testified that "there is

---

[33/] ITC Hearing Transcript at 998 (November 9, 2001).

a 40 percent difference in selling price between imported and domestic flanges."[34/] Thus, AEQFM's assertion that the ITC did not collect any underselling data regarding flanges is erroneous.

F. Domestic Producers are Able to Supply the "Approved" Market in the Oil and Gas Sector

AEQFM asserts, AEQFM Comments, at 23, that U.S. producers do not have the capacity to meet domestic demand for stainless steel flanges in the oil and gas industry.[35/] AEQFM alleges that the Approved Market Lists ("AMLs") used by U.S. companies in the oil and gas industry include only a "handful" of U.S. producers and mostly European companies.[36/] AEQFM contends that import restrictions would "very nearly wipe out a significant portion of the suppliers currently included on those lists." AEQFM Comments, at 24. AEQFM supplies no evidence to support this claim and indeed it is insupportable.

The major U.S. manufacturers, including Gerlin, all produce flanges for the approved market in the oil and gas sector. Regardless of the domestic industry's ability to supply the approved oil and gas market, however, customers turn to foreign suppliers to take advantage of

---

[34/] ITC Hearing Transcript at 995 (November 9, 2001).

[35/] AEQFM filed an exclusion request with USTR for stainless steel flanges for the approved market. Gerlin opposes that request for the reasons set forth in its December 5, 2001 submission to USTR.

[36/] Interestingly, in its briefs on the issue of injury filed with the ITC, AEFQP argued that imported flanges could not be injuring the approved segment of the domestic market because "a significant portion of imported stainless steel flanges" are unable to "compete in the important 'approved' segment of the market." Pre-hearing Brief of AEQFM in ITC Inv. No. TA-201-73, dated Sept.10, 2001. Far from claiming that there was an insufficient domestic supply of approved market flanges, AEQFM argued before the ITC that the domestic industry caters to these more lucrative markets, leaving imports to focus on the lower-end markets. Post-Hearing Brief of AEQFM in ITC Inv. No. TA-201-73, dated Oct. 9, 2001.

the low price of imported flanges. It is not the case that domestic supply is inadequate; rather domestic market share has decreased as a result of the surge of low-priced imports.

In addition, AEQFM overstates the distinction between the approved and non-approved markets for stainless steel flanges. The line between approved and non-approved markets has blurred considerably as prices for foreign flanges have plunged over the past several years. As the Vice President of Gerlin testified before the ITC: "A 40-percent price advantage can really help a supplier gain 'approved' status."[37/] He also testified that: "The bright line between approved and non-approved markets that the Europeans portray has dimmed in recent years as low-priced European and non-European imported flanges have found acceptance by all end-users. For the Commission to exempt stainless steel flanges for approved markets would undermine the effectiveness of the remedy."[38/] The ITC did not exempt approved market flanges and neither should the President.

CONCLUSION

To address the serious injury found by the ITC, the President should apply an additional tariff of at least 40 percent *ad valorem* to imports of stainless steel flanges. A tariff at this level is crucial to enable the domestic industry to recover from the devastating impact of low-priced and high-volume imports and to make the adjustments necessary to compete with imports in the future. The extraordinary margins of underselling, the irrelevance to this industry of any remedies arising from global capacity reductions or legacy cost relief, the vast importer inventories already poised for sale into the U.S. market, and the threat of renewed surges of

---

[37/] ITC Hearing Transcript at 2236 (Sept. 28, 2001).

[38/] ITC Hearing Transcript at 1000 (Nov. 9, 2001).

imports prior to the effective date of the President's remedy, all provide compelling reasons for the President to set a tariff remedy above the level proposed by the ITC. None of the comments adverse to a remedy for the flange and fitting industry withstands scrutiny.

In fashioning this remedy, the President should exclude flange forgings, because domestic sources of these forgings are inadequate. The President should exercise his authority under Section 201 to promote positive adjustment to import competition by ensuring that the opportunity to compete does not become the preserve of only a portion of the domestic flange industry.

Respectfully submitted,

/s/ Simeon M. Kriesberg

Simeon M. Kriesberg
Carol J. Bilzi
Lisa L. Levine
MAYER, BROWN & PLATT
1909 K Street, N.W.
Washington, D.C. 20006-1101

Counsel for
Gerlin, Inc.

January 15, 2002